

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Mi Sook d/b/a Lee's Market and Local 169, UNITE,
AFL-CIO. Case 29-CA-22533**

April 30, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND
BRAME

Upon a charge filed by the Union on January 26, 1999, the General Counsel of the National Labor Relations Board issued a complaint on February 23, 1999, against Mi Sook d/b/a Lee's Market, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On March 29, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On March 31, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the charge in Case 29-CA-22533, and the complaint and notice of hearing subsequently based thereon, were both served on the Respondent, as were all other documents pertaining to this proceeding. As such, the Respondent has been put on notice of the procedures to be followed by it, including the requirement that it file an answer to the complaint.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Brooklyn, New York, has been engaged in the sale of fruits, vegetables,

and other consumer goods. During the past year, the Respondent, in the course of its business operations, derived gross revenues in excess of \$500,000 and purchased and received at its Brooklyn facility, fruits, vegetables, and goods valued in excess of \$5000 directly from points located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following unit of employees of the Respondent, the unit, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and regular part-time employees, employed by Respondent at its Brooklyn facility, excluding all office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

Since November 12, 1998, and at all times material, the Union has been the exclusive bargaining representative of the unit, based on Section 9(a) of the Act.

Since on or about December 14, 1998, the Union, by its agents, requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the employees in the unit with respect to their rates of pay, wages, hours of employment, and other terms and conditions of employment. Since on or about December 14, 1998, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing since December 14, 1998, to recognize and bargain with the Union, we shall order the Respondent to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the unit, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Mi Sook d/b/a Lee's Market, Brooklyn, New York, its officers, agents, successors, and assigns, shall

1.Cease and desist from

(a) Failing and refusing to recognize and bargain with Local 169, UNITE, AFL-CIO as the exclusive bargaining representative of the employees in the appropriate unit set forth below. The appropriate unit is:

All full-time and regular part-time employees, employed by Respondent at its Brooklyn facility, excluding all office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2.Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, recognize and bargain in good faith with Local 169, UNITE, AFL-CIO with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the unit, and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Re-

spondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 14, 1998.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 30, 1999

John C. Truesdale,	Chairman
--------------------	----------

Sarah M. Fox,	Member
---------------	--------

J. Robert Brame III,	Member
----------------------	--------

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to recognize and bargain with Local 169, UNITE, AFL-CIO as the exclusive bargaining representative of our employees in the appropriate unit set forth below. The appropriate unit is:

All full-time and regular part-time employees, employed by us at our Brooklyn facility, excluding all office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain in good faith with Local 169, UNITE, AFL-CIO with respect to rates of pay, wages, hours of employment and other terms and conditions of employment, of our employees in the unit, and put in writing and sign any agreement reached with the Union.

MI SOOK D/B/A LEE'S MARKET

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."